

UNITED STATES DISTRICT COURT

for the

District of New Mexico

United States of America

v.

ROBERT GUTIERREZ

Case No. 21-MJ-1783

*Defendant(s)***FILED**United States District Court
Albuquerque, New MexicoMitchell R. Elfers
Clerk of Court**CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of December 3rd, 2021 in the county of San Miguel in the
 District of New Mexico, the defendant(s) violated:*Code Section*

18 U.S.C. § 111(b)

Offense Description

Assault on a Federal Officer Resulting in Bodily Injury

This criminal complaint is based on these facts:

See attached affidavit

☒ Continued on the attached sheet.*Complainant's signature*

Bradley Carney U.S. Postal Inspector

Printed name and title

Submitted via email and telephonically sworn to me.

Date: December 5, 2021*Judge's signature*City and state: Albuquerque, New Mexico

Kirtan Khalsa, Magistrate Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

United States of America,
Plaintiff,

vs.

Robert GUTEIRREZ
Defendant.

AFFIDAVIT

I, Bradley Carney, having been duly sworn, do depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a United States Postal Inspector with the United States Postal Inspection Service (USPIS) and have been so employed since February 2017. I have completed a twelve-week basic training course in Potomac, Maryland, which included training in the investigation of violent crimes of United States Postal Service (USPS) facilities and employees. I am currently assigned to the Phoenix Division, Albuquerque, NM Domicile which is responsible for investigating crimes involving the U.S. Mail. During my career as a federal law enforcement officer, I have participated in financial crimes, robberies, burglaries, drug trafficking and violent crime investigations.
2. This Affidavit is made for the limited purpose of establishing probable cause that Robert F. Gutierrez (GUTIERREZ) committed the following criminal offense: Assault on a Federal Officer resulting in Bodily Injury, in violation of 18 U.S.C. § 111(b).
3. My knowledge of the facts alleged in this Affidavit arises from my training and experience, my personal observations, my participation in the investigation described below, information developed by law enforcement agents, my discussions with witnesses, and my review of documents and video. This Affidavit is intended to show only that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

DETAILS OF INVESTIGATION

4. On December 3, 2021, The USPIS Albuquerque, NM Domicile, received a report that a USPS City Carrier C.K. was assaulted while delivering mail along his assigned route in Las Vegas, NM. It was also reported that C.K. was injured during the assault. C.K. is a federal employee as that term is defined in 18 U.S.C. § 1114, and the assault occurred during the course of C.K.'s official duties.

5. Postal Inspectors K. McNulty and I responded and spoke to Las Vegas Police Department (LVPD) Officers who responded to the reported assault. Inspectors felt Officer J. Ellis was hesitant to provide information regarding the incident. LVPD SGT D. Casados arrived and explained that LVPD received a 911 call from GUTIERREZ, who lives at 515 Sun Drive, Las Vegas, NM, who stated he hit the mailman. SGT Casados informed Inspectors that GUTIERREZ is known to them because he is a retired LVPD Officer. SGT Casados also stated they interviewed GUTIERREZ who explained he was expecting a USPS parcel and the C.K. didn't drop the parcel off at the door as expected, instead C.K. left a notice in his mailbox that informed him he can pick up his parcel at the post office. When C.K. was delivering mail on the opposite side of the street near 514 Sun Drive, Las Vegas, NM, GUTIERREZ asked C.K. where his parcel was. GUTIERREZ told LVPD officers that he and C.K. began arguing during which time C.K. made a statement referencing "1-8-7," and threatened GUTIERREZ's family. SGT Casados explained that 1-8-7 is a reference about killing a police officer and GUTIERREZ took that statement as a threat. SGT Casados said that is when GUTIERREZ explained he punched C.K.. SGT. Casados stated the attending emergency medical technician (EMT) told him C.K. lost consciousness during the incident.
6. SGT. Casados stated they attempted to interview the C.K., but he didn't provide them with much information. C.K. told SGT Casados that GUTIERREZ and the C.K. have had issues in the past due to different political views. The C.K. told LVPD Officers he left a notice of the parcel in the mailbox to avoid another issue with GUTIERREZ. SGT Casados said the C.K. refused medical treatment from the EMTs.
7. SGT Casado said the on-duty USPS supervisor showed up at the scene and told the officers that the City Carrier's actions of not attempting to deliver the parcel is against USPS policy not to attempt to deliver the parcel.
8. SGT Casados stated he obtained video of the incident, but he hasn't reviewed the video yet and wouldn't be able to provide it to Postal Inspectors until his report was approved next week. SGT Casados also stated once the police report was approved Inspectors would be allowed to request the 911 call, lapel videos, and a copy of the police report. SGT Casados explained that they had not filed any criminal charges against GUTIERREZ.
9. On the same day, Inspector McNulty and I interviewed the C.K. at the Alta Vista Hospital located at 104 Legion Dr, Las Vegas, NM. C.K explained he went to his mother's house after the incident and he later decided to be seen at the emergency room. C.K. said he has had previous issues with GUTIERREZ. C.K. said he saw a parcel requiring a signature for delivery for GUTIERREZ's residence and he decided to leave a notice in the mailbox rather than risk having another issue with GUTIERREZ. C.K. explained he left the notice in GUTIERREZ's mailbox and continued to deliver mail along Sun Drive. C.K. said as he was delivering mail at 514 Sun Drive, which is across the street from GUTIERREZ's house, he noticed GUTIERREZ approaching him. C.K. explained that GUTIERREZ became upset. C.K. said he began to deliver GUTIERREZ's parcel but needed to obtain the required signature with his assigned scanner. As C.K.

turned to retrieve his scanner, GUTIERREZ punched him. C.K. explained he was facing away from GUTIERREZ but GUTIERREZ was able to punch him in his face. C.K. said he fell to the ground and when he got back up, GUTIERREZ punched him in the face again. C.K. said he doesn't remember losing consciousness, but he said he doesn't recall what happened after the second punch until LVPD arrived. C.K. had lacerations to the right side of his forehead, a bloody nose, bruised and swollen right eye and cheek, scrapes on the back of his hands.

10. Inspectors obtained surveillance video of the incident. The video shows the U.S. Mail truck driven by the C.K. approached the house located at 514 Sun Drive, Las Vegas, NM. GUTIERREZ is seen approaching the U.S. Mail truck and C.K.. It appears that GUTIERREZ follows C.K. around the truck. As C.K. steps onto the sidewalk, it appears GUTIERREZ throws a punch at C.K.. C.K. then walks to the street side of the truck as GUTIERREZ follows him. Once out in the street, C.K. turns and faces GUTIERREZ and they appear to bump into one another. They both extend their arms out to their side as if they were puffing out their chests. C.K. turns and walks back to the driver side (curb side) of the truck. GUTIERREZ continues to follow C.K. around the truck. Both individuals appear to argue. C.K. walks to the driver's side, and GUTIERREZ is then seen punching C.K. in the face. C.K. falls to the ground in front of the truck. GUTIERREZ then took a few steps away from the truck when C.K. gets up and approaches GUTIERREZ. GUTIERREZ then punches the C.K. in the face again. C.K. falls face first to the ground in the street. GUTIERREZ appears to reach down to C.K. and rolls him over. GUTIERREZ then walked to the front door of the house located at 314 Sun Drive for a few seconds and then across the street past C.K., who is still laying in the street, and approaches his house. A short time later, GUTIERREZ walks back up where C.K. was laying. At the same time as GUTIERREZ approached C.K. a vehicle is seen pulling up to the scene. The video cuts off at that point.

CONCLUSION

11. Based on the aforementioned facts, I believe probable cause exists to issue the a criminal complaint charging the following criminal offense: Assault on a Federal Officer Resulting in Bodily Injury, in violation of 18 U.S.C. § 111(b).



Bradley A. Carney
United States Postal Inspector

Electronically submitted and sworn to
me telephonically this 5th day of
December 2021.

A handwritten signature in cursive script, reading "Kirtan Khalsa". The signature is written in black ink and is positioned above a horizontal line.

Honorable Kirtan Khalsa
United States Magistrate Judge